IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 11, 2006 Session

STATE OF TENNESSEE v. R.D.S.

Appeal from the Circuit Court for Williamson County
No. II-CR04274 R. E. Lee Davies, Judge

No. M2005-00213-COA-R3-JV - Filed on November 17, 2006

A high school student was charged with the delinquent acts of possession of marijuana and drug paraphernalia after those items were found in his truck, which was parked on school grounds. In his de novo appeal of the juvenile court's adjudication, the circuit court denied the student's motion to suppress his admission that the marijuana was his. The trial court determined that *Miranda* warnings were not required because the student was not in custody when he made the incriminating statements. After a hearing, the student was adjudged to be delinquent. We affirm the trial court as to the introduction of the incriminating statements and also affirm the introduction of the seized evidence because the search was subject to the reasonable suspicion standard.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Joseph D. Baugh, Franklin, Tennessee, for the appellant, R.D.S.

Paul G. Summers, Attorney General & Reporter; Mark A. Fulks, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. BACKGROUND

On November 25, 2003, G.N., a student at Williamson County's Page High School showed up for one of his classes in what appeared to be a state of intoxication, staggering and with slurred speech. He was taken to the office of Tim Brown, the vice principal, because of concerns about his condition. Mr. Brown summoned the School Resource Officer, Deputy Sharon Lambert, who is a sworn law enforcement officer.

Deputy Lambert arrived at Mr. Brown's office at about 12:30 p.m. When she saw G.N., he appeared to be "very sleepy or groggy, and his eyes were really bloodshot." She asked him what he had been taking, and he stated that he had drunk a quarter of a bottle of Robitussin before coming to school. She was skeptical, as classes had begun several hours earlier, and it seemed unlikely to her that any such effects from that amount of cough syrup would persist for so long. Since some teachers had reported that G.N. had skipped several classes that morning, the deputy asked him where he had been, and he said he had been out in a truck in the school parking lot. The truck belonged to another student, sixteen-year old R.D.S.

Principal Brown and Deputy Lambert proceeded to the school commons area and found R.D.S. Unlike G.N., he did not appear to be under the influence of any intoxicants. The deputy told R.D.S. about G.N.'s condition and statements and explained that, as a consequence, they would be searching his truck. She requested that he accompany her since it was his vehicle. The deputy was closely questioned as to the tenor and tone of her request because of its bearing on one of the primary issues in this case.[1] Principal Brown also testified that R.D.S. was requested to accompany them, and was not ordered or compelled to do so.

Deputy Lambert, Principal Brown, and R.D.S. walked out to the parking lot together. The deputy asked the student if there was anything in his vehicle that shouldn't be there. He responded that there was not, and the deputy asked if he realized that he was responsible for anything that was in the vehicle. As they continued to walk, she asked him for a second time whether there was anything in the truck that shouldn't be there. He again answered no and quoted from a sign in front of the school that cited the Tennessee Code provision that any vehicle on school property was subject to search.

The truck was unlocked. When the door was opened, Deputy Lambert immediately found a plastic bag with green leafy material in a side compartment of the driver's door. She held it up and said, "Oh, except for this marijuana?" R.D.S. admitted that it was his, saying something like, "well, that's mine." The deputy continued to search and also found a glass pipe containing a tarry residue in the same compartment. As they walked back to the school building, Deputy Lambert mentioned that a teacher had told her that R.D.S. had skipped classes that morning, and she asked him where he had been. He stated that he and G.N. had left school at about 9:30 and smoked a bowl of marijuana, gone to the bank, and returned to school about an hour later.[2]

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[1] She was asked several times about her statements to R.D.S., and her answers were essentially the same. When a question was phrased in terms of her telling the student to come with her, she quickly corrected the use of the term "told" and reiterated that she merely asked him to come out to the truck. She further stated that ". . . he was the owner of the vehicle, so I felt it was appropriate that he be aware we were going to be searching his vehicle." She also said her telling R.D.S. about the search and the request that he accompany herself and Mr. Brown was a courtesy.

[2] Recordings from video surveillance cameras later confirmed that the two students left around 9:30 a.m. and returned around 10:30 a.m.

When they got back to the school offices, the door to Mr. Brown's office was open, and G.N. was still sitting there. R.D.S. told him to just tell the truth. The deputy then transported G.N. to the juvenile detention center. R.D.S. was detained in the principal's office pending a special education hearing. After the hearing, Deputy Lambert took R.D.S. to the juvenile detention facility.

II. COURT PROCEEDINGS

Deputy Lambert filed a Petition in Juvenile Court which charged R.D.S. with delinquent acts, *i.e.*, simple possession or casual exchange of marijuana and possession of drug paraphernalia. R.D.S.'s attorney filed a motion to suppress the defendant's incriminating statements on the ground the student was not informed of his *Miranda* rights prior to "his interrogation by Deputy Lambert and Assistant Principal Tim Brown." He also moved to suppress the evidence seized from the truck. The Juvenile Court denied the motion and conducted an adjudicatory hearing on March 4, 2004, which resulted in a finding of delinquency against R.D.S., who then appealed to the Circuit Court.

R.D.S.'s attorney renewed his motion to suppress R.D.S.'s statements, which the Circuit Court heard on November 12, 2004.[3] Deputy Lambert and Mr. Brown both testified to the facts as described above. At the conclusion of argument, the court announced its decision, stating that the right to privacy is much less in the school setting than elsewhere, that the officer had the right to conduct the search without consent, that asking the defendant to walk outside while his vehicle was being searched did not amount to any kind of custodial arrest, and that the defendant's statement was not in response to any question, but was a voluntary statement. The court accordingly denied the motion to suppress.

The final trial of the matter was conducted on January 18, 2005. Deputy Lambert testified once again. The parties stipulated that R.D.S. had passed all the drug tests conducted at the juvenile court since the original petition and that the leafy substance in the plastic bag was tested and was identified as marijuana. The lab report from that test was placed into evidence. R.D.S. did not testify.

The mother of R.D.S. testified and described her own activities on the morning her son was arrested.[4] She testified that when she arrived at the school for a meeting at about 10:30 in the morning, she saw several students around her son's truck. They left as she approached, and she saw that G.N. was inside the truck. She stated that before she opened the door, G.N. reached into the front pocket of his hooded sweatshirt, took something out and placed it under the front seat. She asked him what he was doing, and he said that he was tired and that R.D.S. had told him he could take a nap in the truck.

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[3] There is some dispute as to whether the motion included the seized evidence.

[4] The parking lot at Page High School is monitored by video cameras, and the mother's testimony was supplemented by a showing of videotapes of that day.

The mother suggested that the marijuana found in her son's truck was not his, but had been left there by G.N., and that R.D.S. had said it was his in order to protect his friend. The judge did not believe this theory and, like the juvenile court, he found that the State had successfully proved that R.D.S. possessed marijuana on school grounds. The court ordered R.D.S. to serve 48 hours of juvenile detention and to remain on probation until the age of 19. His drivers license was revoked, with the proviso that he could appeal to have it returned in 90 days. This appeal followed.[5]

III. THE INCRIMINATING STATEMENTS

R.D.S. argues on appeal that the trial court erred by denying the motion to suppress his incriminating statements. He relies, as he did below, on the United States Supreme Court's seminal holding in *Miranda v. Arizona*, 384 U.S. 436 (1966), that "the prosecution may not use statements . . . stemming from custodial interrogation of a defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id*. at 444. Those safeguards take the form of pre-interrogation cautions, now commonly known as *Miranda* warnings.[6]

In a case decided in the same year as *Miranda*, the United States Supreme Court extended the due process rights that normally accompany a criminal prosecution to delinquency proceedings in juvenile courts, where those proceedings could lead to a term of confinement. *In re Gault*, 387 U.S. 1 (1966); *see also In re Winship*, 397 U.S. 398 (1968). Our legislature subsequently enacted Tenn. Code Ann. § 37-1-127 [Acts 1970, ch. 600 § 27] which declares, among other things, that "[a]n extrajudicial statement that would be constitutionally inadmissable in a criminal proceeding, shall not be used against the child." *See also State v. Carroll*, 36 S.W.3d 854, 862 (Tenn. Crim. App.1999); *Kilburn v. State*, 509 S.W.2d 237, 239 (Tenn. Crim. App. 1973). Thus, the protections ensured by *Miranda* apply in juvenile proceedings.

Because there is no dispute that *Miranda* warnings were not given to R.D.S. before he made the incriminating statements that the prosecution used at the hearing, the issue is whether those statements were made during or as a result of custodial interrogation. If the statements resulted from custodial interrogation, they must be excluded from evidence, and the motion to suppress should have been granted. *State v. Payne*, 149 S.W.3d 30, 32 (Tenn. 2004). There are two components to that inquiry, custody and interrogation, and both must be present to trigger the *Miranda* requirements. *State v. Walton*, S.W.3d 75, 82 (Tenn. 2001).

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[5] The defendant filed a Notice of Appeal to the Court of Criminal Appeals and a Motion for Stay pending the resolution of the appeal. The Circuit Court granted the Motion for Stay, but the defendant remained on probation. The State moved to have the case transferred to the Court of Appeals, pursuant to Tenn. R. App. P. 17 and Tenn. Code Ann. § 37-1-159(c). The State also filed a Rule 10 Motion to have the stay vacated. That motion was denied.

[6] Before questioning a person in custody, the police must advise the person that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. *Miranda*, 384 U.S. at 479; *State v. Sawyer*, 156 S.W.3d 531, 534 (Tenn. 2005).

While formal arrest clearly results in custody, "custodial interrogation" may occur in situations where a formal arrest has not been made. In *Miranda*, the Court stated, "[c]ustodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. In resolving whether a person was in custody even though not under formal arrest, courts must look at the totality of the circumstances surrounding the interrogation. *Stansbury v. California*, 511 U.S. 318, 322-323 (1994); *State v. Anderson*, 937 S.W.2d 851, 854 (Tenn. 1996); *State v. Alvarado*, 961 S.W.2d 136 (Tenn. Crim. App. 1996).

"The test is whether, under the totality of the circumstances, a reasonable person in the suspect's position would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest." *State v. Payne*, 149 S.W.3d at 32, *quoting State v. Anderson*, 937 S.W.2d at 855. Further, this test is objective and must be applied from the viewpoint of the suspect; the subjective view of the law enforcement officials involved does not bear upon the question. *State v. Anderson*, 937 S.W.2d at 855.

There are a number of factors relevant to the question of whether a reasonable person would consider himself or herself deprived of freedom to the necessary degree, including:

> the time and location of the interrogation; the duration and character of the questioning; the officer's tone of voice and general demeanor; the suspect's method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect's verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

State v. Walton, 41 S.W.3d at 82-83, *quoting State v. Anderson*, 937 S.W.2d at 855.

With regard to the second component, interrogation, *Miranda* warnings are required where an accused who is in custody is subjected to interrogation or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291, 298 (1980); *State v. Sawyer*, 156 S.W.3d 531, 534 (Tenn. 2005).

> Interrogation "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Innis*, 446 U.S. at 301, 100 S.Ct. 1682. Interrogation also includes any "practice that the police should know is likely to evoke an incriminating response from a suspect." *Id*. The definition of interrogation focuses primarily upon the accused's perception rather than on the police officer's intent. *Id*. at 301, 100

> S.Ct. 1682. However, the officer's intent may be relevant to determine whether the officer should have known his or her words or actions were reasonably likely to invoke an incriminating response. *Id*. at 301 n. 7, 100 S.Ct. 1682.

State v. Sawyer, 156 S.W.3d at 534.[7]

As the standards make clear, the inquiry as to custodial interrogation is fact-specific. Some factual situations have resulted in holdings that a defendant's statements were admissible despite the absence of prior *Miranda* warnings. *See, e.g.*, *State v. McCary*, 119 S.W.3d 226 (Tenn. Crim. App. 2003) (defendant made incriminating statements during search of his office by law enforcement officers); *State v. Alvarado*, 961 S.W.2d 136 (Tenn. Crim. App. 1996)(defendant questioned in his own apartment as to how long he had been with the victim that evening); *State v. Darnell*, 905 S.W.2d 953 (Tenn. Crim. App. 1995) (suspect questioned as he sat in front seat of police car); *State v. Smith*, 868 S.W.2d 561, 570 (Tenn. 1983) (questioning at the station house in the early stages of a murder investigation); *Childs v. State*, 584 S.W.2d 783 (Tenn. 1979) (suspect was first questioned while in a police car that he had voluntarily entered, and then at the station house).

Factual situations that have compelled a contrary result are exemplified in *State v. Sawyer*, 156 S.W.3d 531 (Tenn. 2005), wherein the defendant made an oral admission after an officer read an affidavit to him supporting the arrest warrant, but before he was advised of his *Miranda* rights, and *State v. Walton*, 41 S.W.3d 75, in which the defendant was handcuffed and placed in the back of unmarked patrol car, but had not been formally arrested when he was questioned in response to a voluntary statement, but no warnings were given. In both these cases, the statements were held inadmissible.

IV. ANALYSIS

In general, we must uphold findings of fact by the trial court in a hearing on a motion to suppress unless the evidence preponderates against those findings. *State v. Sawyer*, 156 S.W.3d at 533; *State v. Saylor*, 117 S.W.3d 239, 244 (Tenn. 2003); *State v. Munn*, 56 S.W.3d at 493. In specific, the questions of whether a defendant was placed in custody and was interrogated are primarily questions of fact. *State v. Walton*, 41 S.W.3d at 81. Consequently, we review the trial court's holding herein that R.D.S. was not subjected to custodial interrogation under the standard applicable generally to factual findings. *See* Tenn. R. App. P. 13(d).

Additionally, issues of credibility of witnesses and weight of the evidence are matters entrusted to the trial court. *State v. Sawyer*, 156 S.W.3d at 533; *State v. Munn*, 56 S.W.3d at 493; *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). On appeal, the party who prevailed in the trial court on the suppression issue is entitled to the strongest legitimate view of the evidence and to all

[7] However, "[r]esponses to general on-the-scene questioning by an officer during the fact finding process as to facts surrounding the crime are admissible in evidence." *State v. Goss*, 995 S.W.2d 617, 629 (Tenn. Crim. App. 1998), *quoting State v. Johnson*, 685 S.W.2d 301, 306 (Tenn. Crim. App. 1984)).

reasonable inferences drawn from that evidence. *State v. Sawyer*, 156 S.W.3d at 533; *State v. Munn*, 56 S.W.3d at 493; *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). The trial court's application of law to the facts is reviewed under a *de novo* standard. *State v. Walton*, 41 S.W.3d at 81.

Based on our review of the record, we first find that the questions posed by Deputy Lambert and her question/statement upon finding the marijuana constituted interrogation or its functional equivalent. They were direct questions or "words or actions . . . that the [law enforcement officer] should know are reasonably likely to elicit an incriminating response from the suspect." *State v. Sawyer*, 156 S.W.3d at 534.[8] However, questioning by itself does not trigger the requirement of *Miranda* warnings. The determinative issue herein is whether that interrogation took place while R.D.S. was in custody.

In the case before us, the actions at issue occurred in a school. That fact has generated arguments that we must briefly address. First, the State initially argues that the warnings necessary to protect the privilege against self-incrimination were not required herein because " the *Miranda* rule has never been extended to interrogations conducted by school officials in furtherance of their disciplinary duties, whether assisted by school resource officers or otherwise." The cases cited in support of this argument, however, involve only school disciplinary proceedings, not criminal prosecutions or juvenile proceedings with the possibility of confinement. We find no basis to hold that neither Tenn. Code Ann. § 37-1-127 nor the constitutional protections against self-incrimination apply in this situation where a law enforcement officer questioned the juvenile and brought delinquency charges against him. The statements at issue were used by the prosecution in the delinquency hearing which resulted in a disposition that included confinement. We find the State's argument on this issue to be without merit.

On the other side of the case, R.D.S. argues that his and other students' freedom is already restricted, because high school students are compelled by law to attend school. In the absence of cases specific to the school context, the defendant suggests that we should draw an analogy to a situation in which the individual is constantly in custody, *i.e.*, prison, and directs our attention to *State v. Goss*, 995 S.W.2d 617 (Tenn. Crim. App. 1998), a case where two prison inmates were convicted of murder in the stabbing death of another inmate.[9]

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[8] Thus, we disagree with the trial court's holding that the statement that the marijuana was his was voluntary and not in response to a question.

[9] In *Goss*, the appellate court held that an inmate is not in custody for *Miranda* purposes unless an added restriction has been imposed upon his freedom of movement beyond the normal restrictions of prison. The court set out four factors that it deemed relevant to the question of whether such an added restriction was in effect: "(1) the language used to summon the inmate, (2) the physical surroundings of the interrogation, (3) the extent to which he is confronted with evidence of his guilt, and (4) the additional pressure exerted to detain the inmate." *State v. Goss*, 995 S.W.2d at 629. Even if we were to use these factors in this case, they do not compel a different conclusion based on the facts herein.

We decline to find that school and prison are analogous for purposes of defining custodial interrogation. In the school setting, while attendance is legally mandated, freedom of movement is not restricted as it is in a penal institution. Students are not physically prevented from leaving school on any given day, as R.D.S. and his friend did in this case on the day the truck was searched.

Nonetheless, we are mindful of the relative positions of students and school or law enforcement officials. We find no basis, however, for devising a different set of factors to use in determining whether the statements at issue resulted from custodial interrogation of the juvenile. The Tennessee Supreme Court has established a set of factors specifically applicable to juveniles when the question is whether *Miranda* rights were voluntarily and knowingly waived after being advised of them. *State v. Callahan*, 979 S.W.2d 577, 583 (Tenn. 1998). However, the Court has not established a set of factors to apply specifically to juveniles to determine whether *Miranda* warnings were required. The factors in *Callahan* are part of the "totality of circumstances" test for waiver and, generally, require that the juvenile's age and experience be considered in determining the voluntary and knowing nature of the waiver.[10]

The same issues are not present in a determination of whether a defendant was subjected to custodial interrogation. To the extent the juvenile status of a defendant should be taken into consideration, we think that is accomplished by applying the established test with due consideration to the fact that the person is a juvenile who is a high school student. The test is an objective one, but must be applied from the viewpoint of the defendant. Thus, the question remains whether, under the totality of circumstances (including the facts that R.D.S. was a high school student, the acts occurred on school grounds, and both the law enforcement officer and a school vice principal participated), a reasonable person in R.D.S.'s position (as a high school student) would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest.

In the case before us, R.D.S. argues that he was essentially in custody from the time Deputy Lambert and Principal Brown approached him and "forced" him to accompany them to his truck. Although no explanation of the trial court's ruling that the statements were admissible is set out in the order denying the motion to suppress, the trial court made the following pertinent statements from the bench:

> The officer had a right to conduct a search of that vehicle without consent. And I find that asking the young man to walk out while they searched his vehicle does not amount to any kind of custodial arrest. He was not in custody at that point in time.

Deputy Lambert testified she told R.D.S. she was going to search his truck and asked him to join her. She stated that she told him "we are going to be searching the vehicle and requested that

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[10] Those factors include: (1) all circumstances surrounding the interrogation, including, but not limited to the juvenile's age, experience, education, and intelligence; (2) the juvenile's capacity to understand the *Miranda* warnings and the consequences of the waiver; (3) the juvenile's familiarity with *Miranda* warnings or the ability to read and write in the language used to give the warnings; (4) any intoxication; (5) any mental disease, disorder or retardation; and (6) the presence of a parent, guardian, or interested adult. *Callahan*, 979 S.W.2d at 583.

he go with us since it was his vehicle." She had informed him that the reason for the search was that G.N. had been found intoxicated and said he had been in R.D.S.'s truck.

While R.D.S. argues that the deputy's request was tantamount to an order and that an ordinary student in the defendant's situation would not feel free to refuse, it appears to us that neither the language of the request nor its substance demonstrated a degree of compulsion that approximates the deprivation of freedom of movement associated with formal arrest.

We have considered the totality of the circumstances, including those particularly relied upon by R.D.S. For example, he emphasizes that he was removed from the school building where he was taking a break and was separated from his fellow students and classes. The questioning occurred on the way to the truck and in the parking lot, a location dictated by the decision to search the truck. R.D.S. was not at that time confined to the principal's office or some other room in the school for the purpose of questioning.

We conclude that R.D.S. was not in custody for *Miranda* purposes. A reasonable person in the same circumstances would not have considered his freedom limited to the degree of a formal arrest. Accordingly, the evidence does not preponderate against the trial court's finding that R.D.S. was not in custody at the time he made his incriminating statements, and its denial of the motion to suppress those statements is affirmed.

V. THE SEIZURE OF EVIDENCE

R.D.S. argues that the marijuana and pipe found in his truck should not have been allowed into evidence against him because their discovery resulted from an unconstitutional search.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The due process clause of the Fourteenth Amendment extended this guarantee to searches conducted by state officials. *Elkins v. United States*, 364 U.S. 523, 528 (1960). The Fourth Amendment applies to searches by school officials, and students have some legitimate expectations of privacy in a school setting. *New Jersey v. T.L.O.*, 469 U.S. 325, 333-36 (1985).

The Fourth Amendment protects against **unreasonable** searches. It "does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). The reasonableness of a search is generally determined by balancing the nature of the intrusion on the individual's privacy against the promotion of a legitimate governmental interest. *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822, 829 (2002); see also *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that a warrantless search may be based on a lower standard than probable cause in some situations, *i.e.*, where the search is justified by important government interests and is minimally intrusive of individual privacy interests). In the public school setting, that balancing involves the competing interests of the school officials in

providing a safe environment conducive to education and the student's legitimate expectations of privacy. *New Jersey v. T.L.O.*, 469 U.S. at 339.

"Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.*, 469 U.S. at 337. Because of the interests involved in the unique setting of a public school and the need to maintain safety and order, school officials are not required to obtain a warrant before conducting a search. *Id.*, 469 U.S. at 340. Instead, warrantless searches by school officials in a school setting are subject to a "reasonableness under all the circumstances" test. *Id*. at 336. Such searches are to be analyzed under a two pronged test. First, the search must have been justified at its inception and, second, the scope of the search must be reasonable in light of circumstances justifying the privacy invasion in the first place.

> Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

New Jersey v. T.L.O., 469 U.S. at 341-42.

Because of the interests involved in a public school setting,[11] strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law is not required. *Id.*, 469 U.S. at 341. Instead, school officials may conduct a search on the basis of evidence that would not meet the probable cause standard applicable to searches by law enforcement officials. 5 Wayne R. LaFave, Search and Seizure § 10.11(b) (4th ed. 2004). As the Supreme Court stated it in *T.L.O.*, that standard is "reasonable suspicion."[12]

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[11] Specifically, "The substantial need of teachers and administrators for freedom to maintain order in the schools . . . " 469 U.S. at 341.

[12] The case before us involves a particularized search based on individualized factors. Consequently, the principles established in *New Jersey v. T.L.O* govern. The United States Supreme Court and other courts have also established principles for random, suspicionless searches conducted by school officials such as a general search of lockers, drug-testing for participation in extracurricular activities, etc. *See Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (establishing the framework for analyzing a public school district's policy for random drug testing of students participating in school athletic programs and applying the "special needs" exception to the general warrant and probable cause requirements of the Fourth Amendment); *Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. v. 822 (1990) (extending the special needs doctrine to allow suspicionless drug testing of public school student involved in after-school activities). The special needs analysis does not apply to the situation in the case before us because this search was based on individualized suspicion. *See Trinidad School Dist. No. 1 v. Lopez*, 963 P.2d 1095, 1101 (Colo. 1998) (distinguishing between the two lines of cases involving searches by school officials and the situations in which each is applicable).

Reasonable suspicion is neither absolute certainty nor "an inchoate and unparticularized suspicion or 'hunch.'" *New Jersey v. T.L.O.*, 469 U.S. at 346. Instead, it is a common-sense conclusion about human behavior that practical people would rely on. *Id.*

The reasonable suspicion standard has been incorporated into the Tennessee statute governing searches of vehicles located on school property, which is the type of search at issue in this case. That provision, part of the School Security Act, states:

> When individual circumstances in a school dictate it, a principal may order that vehicles parked on school property by students or visitors, containers, packages, lockers or other enclosures used for storage by students or visitors, and other areas accessible to students or visitors be searched in the principal's presence or in the presence of other members of the principal's staff.

Tenn. Code Ann. § 49-6-4204(a).

The next section of the statute, Tenn. Code Ann. § 49-6-4204(b), describes some of the circumstances that may warrant such a search. They include ". . . any other actions or incidents known by the principal which give rise to reasonable suspicion that drugs or drug paraphernalia or dangerous weapons are held on school property by one (1) or more students." Finally, the statute also requires the posting of a notice visible from the school parking lot that vehicles on school property are subject to search. Tenn. Code Ann. § 49-6-4204(d).[13]

As the wording of this statute makes clear, in certain circumstances, vehicles parked in school parking lots can be searched on the basis of "reasonable suspicion." The facts of this case indicate to us that the requirements of the statute were met.[14] Deputy Lambert and Assistant

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[13]Such a notice was posted on the parking lot where R.D.S's truck was parked, and R.D.S. was familiar enough with the notice to be able to essentially quote it.

[14]R.D.S. cites the standards of reasonableness set out in Tenn. Code Ann. § 49-6-4205, and argues that if we apply those standards, we would find that the search of his truck would fail the test. However, Tenn. Code Ann. § 49-6-4205 by its own terms clearly applies only to physical searches of the student's person:

> (a) A student may be subject to physical search because of the results of a locker search, or because of information received from a teacher, staff member, student or other person if such action is reasonable to the principal.
>
> (b) All of the following standards of reasonableness shall be met:
>
> (1) A particular student has violated school policy;
>
> (2) The search will yield evidence of the violation of school policy or will lead to disclosure of a dangerous weapon, drug paraphernalia or drug;
>
> (3) The search is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;
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> (4) The search is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and
>
> (5) The search shall be reasonably related to the objectives of the search and not excessively

(continued...)

Principal Brown made the decision that they needed to search the truck. Both testified that "we" decided that action was "needed" and "reasonable" because G.N. was obviously under the influence of intoxicants in the middle of a school day and said he had been out in R.D.S.'s truck. The incident gave rise to a reasonable suspicion that the substance causing G.N.'s impaired condition was still located in the truck. The truck was still on school property. Based on these facts, we conclude that the search was authorized by Tenn. Code Ann. § 49-6-4204.

That conclusion necessarily leads to the conclusion that the search was supported by reasonable suspicion and, therefore, did not violate the strictures of the Fourth Amendment. *See Shamberg v. State*, 762 P.2d 488 (Alaska Ct. App.1988) (holding that student's obvious intoxication and evasion as to whether he had driven his car during the preceding lunch hour were sufficient to create reasonable suspicion that the student had been consuming or transporting drugs or alcohol in his car, and suspicion that student may have been under influence of drugs in addition to alcohol justified search of ashtray in the vehicle).

R.D.S. argues, however, that the reasonable suspicion standard should not be applied to this search because it was conducted by a law enforcement officer, Deputy Lambert, and the probable cause standard applies to searches by such officers. He further asserts that the requisite probable cause was not present here and, consequently, the evidence found in the search should have been suppressed.

In support of this position, R.D.S. cites footnotes from two cases: *New Jersey v. T.L.O.*, 469 U.S. at 341 n. 7, and *State v. Russell*, No. 02C01-9510-CC-00311, 1997 WL 84661, at *2 (Tenn. Crim. App. Feb. 28, 1997) (no Tenn. R. App. P. 11 application filed). Both cases involved warrantless searches of high school students.

New Jersey v. T.L.O. involved the search of a student's purse. The Court upheld the challenged search, which was carried out on the basis of reasonable suspicion by a school official. The Court limited its holding to actions by a school administrator acting on his own and specifically expressed no opinion as to "the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies." *New Jersey v. T.L.O.*, 469 U.S. at 342 n.7.

In *State v. Russell* the school principal invited officers from the Henry County Drug Task Force to the school to investigate a possible drug transaction on school grounds. One of the suspects

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[14](...continued)
intrusive in light of the age and sex of the student, as well as the nature of the infraction alleged to have been committed.

While we do not concede that those standards would have prohibited a physical search of R.D.S. under the circumstances of the present case, there is nothing in the record to indicate that any such search was conducted. Certainly, the State did not attempt to introduce any evidence resulting from a personal search of R.D.S, and the motion to suppress does not mention any such evidence.

became hostile when questioned, and the officer searched his person "both for weapons and for drugs" and found cocaine and marijuana. The Tennessee Court of Criminal Appeals cited the footnote from *New Jersey v. T.L.O.* and noted the lack of controlling precedent on the question of the proper standard to apply "to law enforcement agents conducting searches on school property." 1997 WL 84661 at *2 n.2. The court elected to review the validity of the search under the traditional probable cause standard, but found that even under that standard the search was valid. *Id*., at *3.

Neither *T.L.O.* nor *Russell* involved a law enforcement officer who works in and is assigned to a school. Since the *T.L.O.* decision, the routine assignment to and placement of law enforcement officers in public schools to help preserve safety and order has increased dramatically. *See* Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 Ariz. L. Rev. 1067, 1075-80 (2003).[15] Consequently, courts have had occasion to address the proper standard applicable to searches involving law enforcement officers on school property.

The majority of those states addressing the issue have adopted the reasoning and analysis set out by the Illinois Supreme Court in *People v. Dilworth*, 661 N.E.2d 310 (Ill. 1996) (holding that the reasonable suspicion standard applied to a search by a school liaison police officer on his own initiative). Essentially, those states extend the "reasonable suspicion" standard to searches involving police officers where (1) school officials initiate the search or police involvement is minimal or (2) school police or liaison officers acting on their own conduct the search. *Id*., 661 N.E. at 317.[16]

A number of courts have adopted the reasoning of *Dilworth* and applied the reasonable suspicion standard to searches by school police resource officers, taken on their own initiative or in conjunction with other school officials. *Russell v. State*, 74 S.W.3d 887, 892-93 (Tex. App. 2002); *In the Matter of D.D.*, 554 S.E.2d 346, 353 (N.C. Ct. App. 2001); *Commonwealth v. J.B.*, 719 A.2d 1058, 1065 (Pa. Super. 1998); *State v. D.S.*, 685 So.2d 41, 43 (Fla. Dist. Ct. App. 1996). The Supreme Court of Indiana recently classified and summarized the holdings on the issue:

> In the face of this open question, many lower courts have identified standards for three different possible scenarios of police involvement in searches of students at schools: (1) where the school officials initiate the search or police involvement is minimal, the reasonableness standard is applied; (2) where the search is conducted by the school resource officer on his or her own initiative to further educationally

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[15] That article explains, for example, that the U.S. Department of Justice operates a School Resource Officer program that provides funding to place police officers in schools to perform various roles. 45 Ariz. L. Rev. at 1077-78.

[16] Some courts have based this decision on the fact that a school resource officer is a school official employed by the school system. *See In the Matter of D.D.*, 554 S.E.2d 346, 352-54 (N.C. Ct. App. 2001) (examining cases wherein courts discussed the role of school-assigned officers as part of the school's efforts to maintain order and safety, which is the justification for the standard applicable to school officials generally). *See also In re William V.*, 4 Cal Rptr 695, 700 (Cal. Ct. App. 2003)(rejecting an analysis based on who pays the school assigned police officer because the officer's function is to protect students and provide them with an environment in which education is possible).

> related goals, the reasonableness standard is applied; and (3) where "outside" police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied.

Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005), *citing In re Angelia D.B.*, 564 N.W.2d 682, 686-87; *Dilworth*, 661 N.E.2d at 316-17; *Russell v. State*, 74 S.W.3d at 892-93; *In the Matter of Josue T.*, 989 P.2d 431, 436-37 (N.M. Ct. App. 1999). The Indiana court found this approach persuasive and adopted it.

We also find the reasoning and holding of the courts in the cases cited above persuasive. We hold that the reasonable suspicion standard applies to searches by law enforcement officers who are assigned to schools and act as part of the school administration, such as resource officers, as well as to searches by school officials. In the case before us, the assistant principal and the school resource officer decided to search the truck and both participated in the search. Even if Deputy Lambert had acted on her own, while the search might not meet the statutory standard in Tenn. Code Ann. § § 49-6-4204, it would still be reviewed for constitutional muster under the reasonable suspicion standard.

VI.

The judgment of the trial court is affirmed. We remand this case to the Circuit Court of Williamson County. Tax the costs on appeal to the appellant R.D.S.

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PATRICIA J. COTTRELL, JUDGE